

**MINUTES**  
**COMMISSION ON CONSTITUTIONAL MATTERS**  
**Marriott St. Louis Airport**  
**April 28–29, 2023**

**173. Call to Order and Opening Prayer**

Commission Chairman Dr. George Gude called the meeting to order with all members present. Rev. Peters offered opening devotions based on Friday on the Gospel for *Misericordias Domini*, John 10:11–16, and on Saturday, on John 10:1–10. After finalizing the minutes of its previous meeting, the commission proceeded with the agenda as presented by Dr. Gude, as follows:

**174. Questions regarding Concordia Publishing House Bylaws (23-3004)**

A member of the Synod has submitted a request for an opinion regarding Bylaws 3.6.3, 1.2.1 (a), and 1.9 consisting of a series of six questions with many sub-points listed for each question. To address these sub-points would require the commission to make broad, theoretical determinations in hypothetical matters, some of which are not clearly or specifically addressed by the Bylaws. The commission, therefore, will limit its answers to the six primary questions asked.

**Question 1:** What is the scope of “publishing and distribution services” to be provided by Concordia Publishing House (CPH), “for the agencies of Synod,” in Bylaw 3.6.3 (a)?

**Opinion:** Bylaw 3.6.3 states the purpose of CPH and reads: “The purpose of Concordia Publishing House is to proclaim the Gospel of our Lord Jesus Christ. It shall serve the Synod and its agencies by developing, producing, marketing, and distributing products for use by members of the Synod, other Christians, and the public in general.” The terms “developing, producing, marketing, and distributing” products are intended to cover the full range of the steps in having a product prepared for use by the church. In the case of any given product, the role of CPH might include all aspects or only one or two.

Bylaw 3.6.3 (a) reads “It shall supply publishing and distribution services for the agencies of the Synod as required, unless this is deemed detrimental to the agency involved.” Agencies of the Synod are defined in Bylaw 1.2.1 (a), which defines an agency as: “An instrumentality other than a congregation or corporate Synod, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s Objectives” (Constitution Art. III).

Bylaw 3.6.3 does not describe CPH as the source for the publishing of all material by the Synod, but rather it serves the Synod as required. What is required and offered by CPH will vary depending on the specifics of any given project of an agency.

**Question 2:** What is meant by the phrase, “published by the corporation,” in Bylaw 3.6.3 (c)?

**Opinion:** Bylaw 3.6.3 (c) reads “Unless otherwise instructed by the Synod, the Board of Directors of Concordia Publishing House shall determine what is to be published by the corporation.” “Published by” has its ordinary meaning; the term “corporation” in this bylaw refers to CPH as a Synodwide Corporate Entity (Bylaw 3.6.1).

**Question 3:** What is necessary to trigger the exception to the CPH Board of Directors’ exclusive discretion in the determination of what is to be published by the corporation stipulated in 3.6.3 (c) by the words, “Unless otherwise instructed by the Synod”?

**Opinion:** Bylaw 3.6.3 (c) reads “Unless otherwise instructed by the Synod, the Board of Directors of Concordia Publishing House shall determine what is to be published by the corporation.” The phrase “instructed by the Synod” refers to a specific convention action, by which the convention may act directly (instructing a certain item to be published) or indirectly (directing the production of a work or a category

of work under specified authority, to be published upon completion) or to a requirement that the Synod has adopted and placed in the Bylaws. For example, Bylaw 3.1.10.1 requires CPH to send the official *Convention Proceedings* to every congregation of the Synod and to all delegates, voting and advisory. Similarly, Bylaw 3.6.3 (a) requires CPH to “supply publishing and distribution services for the agencies of the Synod as required, unless this is deemed detrimental to the agency involved.”

Question 4: What is the scope of the approval required by the words, “shall be approved through the Synod’s prescribed procedure for doctrinal review” in Bylaw 3.6.3 (d)?

Opinion: The purpose of doctrinal review is described in Bylaw 1.9.1: “Doctrinal review is the exercise of the Synod’s responsibility to determine that every doctrinal statement made in its or any of its agencies’ or auxiliaries’ materials is in accord with the Scriptures and the Lutheran Confessions.” Bylaw 3.6.3 (d) reads, “All materials of a religious or theological nature shall be approved through the Synod’s prescribed procedure for doctrinal review before publication,” which specifically states that everything published by CPH that is of a religious or theological nature is subject to doctrinal review as described in Bylaw Section 1.9. However, the bylaws provide three exceptions to the requirement of doctrinal review: The first is “study documents and exploratory material published by boards, commissions, or other subordinate groups of the Synod,” so long as these are clearly marked as “being released for study and discussion purposes, etc.” (Bylaw 1.9.1.1 [b]; the commission intends to treat the scope of materials included in this exception in Op. 23-3010 and does not do so here). The second is “broadcasts over the Synod’s radio station by other than staff members” (Bylaw 1.9.1.1 [f]). The third is “official reports of the boards, commissions, task forces, and committees of the Synod prepared in response to directives of the Synod” (Bylaw 1.9.1.1 [g]).

Unless the material that is of a religious or theological nature falls under one of the three categories referenced above, it is subject to the process of doctrinal review as described in the Bylaws.

Question 5: What differentiates an “official report” under Bylaw 1.9.1.1 (g) from a study document or exploratory material or other work of general work of authorship?

Opinion: See answer to Question 4. Bylaw 1.9.1.1 speaks for itself as to the distinguishing features of the various categories described.

Question 6: What qualifies as a “response to directives from the Synod” under Bylaw 1.9.1.1(g)?

Opinion: See answers to Question 4 and Question 3, where “instructed by the Synod” is a comparable phrase.

### **175. Service of a Synod Congregation (23-3009)**

By an email of April 4, a district president requested an opinion on the following two questions:

Question 1: Is a congregation in violation of Constitution Article VI 3 and Bylaw 2.5.2 if it has as its worship leader a pastor, not called by the congregation, who is Lutheran and has promised to teach completely in line with Lutheran Church—Missouri Synod (LCMS) teaching but is on neither the roster of the Synod nor that of a church body in altar and pulpit fellowship with the Synod?

Question 2: Does a district president have the authority to authorize a pastor who is a member of a church body with which the LCMS is not in altar and pulpit fellowship to proclaim the Word and administer the Sacraments on a regular basis to a congregation of the Synod?

#### **Background:**

Constitution Article VI lists the conditions of membership in the Synod. The first three of these conditions are pertinent for the questions raised, and read:

1. Acceptance of the confessional basis of Article II.

2. Renunciation of unionism and syncretism of every description, such as:
  - a. Serving congregations of mixed confession, as such, by ministers of the church;
  - b. Taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession;
  - c. Participating in heterodox tract and missionary activities.
3. Regular call of pastors and any commissioned ministers and regular election of lay delegates by the congregations, as also the blamelessness of the life of such.

In the original 1847 constitution, current Const. Art. VI 3 (in the 1847 arrangement, as Const. Art. II 5) read, “Proper [*ordentlicher*] (not temporary [*nicht zeitweiliger*]) calling of the pastors and orderly [*ordentliche*] election of congregational delegates by the congregation. The life of both minister and delegate must be beyond reproof.” (*Concordia Historical Institute Quarterly*, April 1943, p. 3) This wording of today’s Const. Art. VI 3 was intended to reject two common trends then occurring in the Lutheran Churches in the United States: The one was a mentality of “we hired the pastor and pay him, so we can tell him what to do and fire him at will.” The other was the practice of licensing candidates for the ministry for a set period of time as a trial period. The wording rejects these based on the nature of a call as a divine call, directed by God; as such, it should not have any preset time limitation.

More recently, the Synod’s current understanding of phrase “regular call of pastors” is described in 1969 Res. 5-23. The resolution states: “The term *regular call* as used in our Synod has always meant a call extended in conformity with the procedures adopted by the Synod as set forth in the *Handbook*” (p. 120).

Constitution Art. VI 1 and 2 would also apply to the questions as asked. Const. Art. VI 1 refers back to the confessional statement of the Constitution and requires acceptance of that statement as a condition of membership. Const. Art. VI 2 requires congregations and individual members to reject all mixing of doctrine and practice with those who teach differently. There is to be doctrinal agreement between the congregation and the pastor serving it. This precludes an individual who is a member of a church body not in altar and pulpit fellowship with the LCMS from being called or serving a member congregation.

#### Regarding Bylaw 2.5.2

Bylaw 2.5.2 currently reads:

Congregations that are members of the Synod, as well as association schools, agencies, auxiliaries, and recognized service organizations shall call and be served only by (1) ordained ministers who have been admitted to their respective ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod; (2) candidates for the pastoral ministry who have satisfied the qualifications and requirements for assignment of first calls by the Council of Presidents acting as the Board of Assignments; or (3) ordained ministers who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit fellowship with the Synod when agreements for such calls are in place.

A bylaw requiring congregations to call and be served only by ordained members and teachers who are on the roster of the Synod was first adopted by the 1969 convention partially in response to 1969 Overture 5-05, which referenced pastors who had resigned from the Synod but still wished to continue to serve the congregation which had called them (*Workbook*, p. 229).

In part, the preamble to the resolution, 1969 Res. 5-23, “To Reiterate in Bylaws that Member Congregations Must Be Served by Members of the Synod,” states (*Proceedings*, pp. 119–20):

One of the very purposes of synodical fellowship is to provide guidance and help in the exercise of congregation’s right to call a pastor, and one of the very reasons why a synod exists is to set standards for the parish pastorate so that the individual congregation may be assured that the man

whom it calls is qualified to serve as its parish pastor (Charter, Art. II b; Constitution, Article III 3).

To this end The Lutheran Church—Missouri Synod establishes procedures for determining whether men meet the standards. One of the advantages which a congregation receives when it joins the Synod is the protection against pastors who do not meet such standards.

...

In order that there may be no misunderstanding or misinterpretation of the condition that the membership of congregations in the Synod requires of a congregation that all pastors, as also all teachers, who are called to and who serve the congregations of the Synod must have been admitted to the ministry of the Synod in accordance with the procedures provided by the Synod for certification, recommendation, ordination, or commissioning of such pastors or called teachers, this committee deems it advisable to reiterate the basic constitutional requirements in clear and unmistakable words also in the Bylaws;

The convention adopted Bylaw 4.02, below (printed in the 1969 *Handbook* as 4.01; *Proceedings*, pp. 119–20):

#### **4.02 Eligible Pastors and Teachers**

- a. Congregations which are members of the Synod, in conformity with Article III, 3 of the Constitution of the Synod, shall call and be served only by pastors and called teachers who have been admitted to these respective ministries in accordance with the rules and regulations set forth in the synodical *Handbook* and have thereby become members of the Synod.
- b. Congregations which violate this requirement and persist in such violation shall after due admonition forfeit their membership in the Synod.

While the Bylaws were renumbered in the following year, and the term *teachers* was eventually changed to *commissioned ministers*, this bylaw remained essentially unchanged until the 2001 convention of the Synod. During this intervening period, the status of women who were graduates of colleges of the Synod and were teaching in the schools of the congregations of the Synod changed, so that they were allowed to become members of the Synod and be placed on the roster of the Synod. In addition, the use of teachers who were not trained in the institutions of the Synod and therefore not eligible for membership in the Synod, greatly increased in the day schools of the congregations of the Synod, which placed them in violation of this bylaw. The result was that 2001 Res. 7-12, “To Separate Calling and Service of Clergy from Other Church Workers” (*Proceedings*, p. 168), changed the bylaw to read:

#### **2.45 Calling Ministers of Religion**

- a. Congregations shall seek the advice of the respective District President when calling ordained or commissioned ministers.
- b. Congregations that are members of the Synod shall call and be served only by ordained ministers who have been admitted to their ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod.
- c. Congregations that are members of the Synod shall call only commissioned ministers who have been admitted to their ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod.
- d. Congregations that violate these requirements and persist in such violation shall, after due admonition, forfeit their membership in the Synod.

This change demonstrates that the terms *call* and *be served by* are not to be regarded as synonyms. In today's practice many others are serving congregations by leading worship without a call. Emeritus pastors regularly serve as vacancy pastors, at times for congregations not in the process of calling, or regularly simply serve in vacant congregations every Sunday, often for periods of a year or more, which might include offering the sacraments and conducting weddings and funerals. Ordained ministers on candidate status also are eligible to serve in the same way. Students from the seminaries of the Synod lead worship in congregations that have no pastor. Vicars on occasion are the only one serving congregations with their supervising pastor called by and serving a neighboring congregation. While these other instances of serving reflect a wide variety, what is consistent is that those serving are either ordained members of the Synod, or students authorized by a seminary of the Synod and under the supervision of an ordained member of the Synod.

**Question 1:** Is a congregation in violation of Constitution Article VI 3 and Bylaw 2.5.2 if it has as its worship leader a pastor, not called by the congregation, who is Lutheran and has promised to teach completely in line with LCMS teaching but is on neither the roster of the Synod nor that of a church body in altar and pulpit fellowship with the Synod?

**Opinion:** In its response, the commission understands the term *worship leader* as used in this question to mean the individual performing the role of the pastor in the public worship of the congregation, proclaiming the Word and/or administering the Sacraments.

A pastor who is not a member of the Synod or of a church body with which the Synod is in altar and pulpit fellowship is ineligible either to be called by a congregation or to serve a congregation by leading worship. For a congregation to so call or be served would be a violation of the conditions of membership under Const. Art. VI 3. Bylaw 2.5.2 requires congregations to “call and be served only by” individuals listed in the three following categories (i.e., ordained ministers on the roster of the Synod; candidates certified for initial placement, for example, by successful completion of colloquy; and ordained ministers in good standing on the roster of church bodies in altar and pulpit fellowship with the Synod), the word “only” highlighting the exclusive nature of this requirement. A congregation may not *call* an excluded individual. The words “and be served by” indicate that a congregation also may not be *served by* an excluded individual in a pastoral capacity (such as by his leading worship), *even if it does not call him* (Cf. Op. 20-2957). By calling or being served by an excluded individual, the congregation puts its membership in the Synod in jeopardy (Bylaw 2.5.4; Const. Art. VI 3; XIII 1).

**Question 2:** Does a district president have the authority to authorize a pastor who is a member of a church body with which the LCMS is not in altar and pulpit fellowship to proclaim the Word and administer the Sacraments on a regular basis to a congregation of the Synod?

**Opinion:** No. A district president does not have the authority to ignore the Constitution and Bylaws of the Synod but rather needs to admonish a congregation that insists on calling or being served by a pastor who is a member of a church body not in pulpit and altar fellowship with the Synod that by doing so the congregation puts its membership in the Synod in jeopardy (Bylaw 2.5.4; Const. Art. VI 3; XIII 1).

### **176. Oklahoma District Bylaws (23-3007)**

By an email of February 21, the Oklahoma District Secretary forwarded the district's *Handbook*, including changes resulting from the district convention, for review. As to content, the commission finds them to be in harmony with the Constitution and Bylaws of the Synod. The commission requests clarification as to whether the indicated changes were effected by the past district convention, and therefore become operative upon the commission's approval, or are to be presented to a coming district convention for adoption, in which case the commission approves them for such presentation. The commission thanks the district for this review and requests a clean copy of the bylaws as adopted when that has taken place.

**177. Montana District Articles of Incorporation (23-3008)**

By an email of March 20, the Montana District President forwarded the district's proposed Articles of Incorporation for review. The commission finds the proposed articles to be in harmony with the Constitution and Bylaws of the Synod and approves them for presentation to the convention for adoption. The district is thanked for this review and reminded to forward for the commission's records a clean copy of the articles as adopted and filed with the State of Montana.

**179. Convention Overture Review**

The commission, in a discussion led by the Secretary, reviewed the overtures assigned to each floor committee in preparation for its service to the committees and convention during Floor Committee Weekend and beyond (Bylaws 3.9.2.2.1–2).

**180. Closing Prayer and Future Meetings**

The commission is next scheduled to meet in connection with Floor Committee Weekend, meeting on Thursday, June 8, and Friday, June 9 (in joint session with the Commission on Handbook in the morning), and then joining the floor committees through Monday, June 12, with some members being released Sunday. The commission will also meet Thursday, July 27, in Milwaukee and then join the convention through Noon on August 3.

John W. Sias, *Secretary*